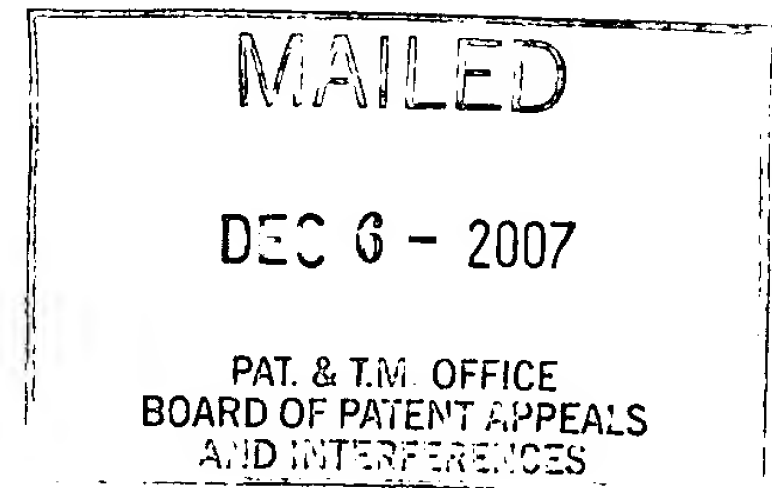


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD J. LEBEL,
VARAZ SHAHMIRIAN,
DANIEL H. VILLEGAS,
DAVID Y. CHOY,
PHILIP T. WEISS,
AND PAUL M. MEADOWS



Application No. 09/768,196

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on November 26, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On January 29, 2007, an Examiner Answer was entered into the record. On page 2, the examiner stated that “. . . The amendment after final rejection filed on July 20, 2006 has not been entered”. However, On October 2, 2006, the examiner

entered an advisory action which stated “The request for reconsideration has been considered but does Not place the application in condition for allowance”

Clarification of the entry of the amendment is required. The Examiner shall notify the appellants, in writing, of whether or not the amendment filed July 20, 2006 is or is not entered.

On May 9, 2007, appellants filed a paper entitled “Replacement Section for Appeal Brief under 37 CFR 41.37”. A review of the file reveals that there is no indication that the Replacement Section for Appeal Brief under 37 CFR 41.37 has been considered.

In addition the headings “Evidence appendix” and “Related proceedings appendix” are missing from the Appeal Brief according to § 41.37(c)(1)(ix) and (c)(1)(v) which states:

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related proceedings appendix***. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for clarification of whether there is to be entry of the amendment filed July 20, 2006, and for notification to appellants in writing of the action taken;
- 2) hold the Appeal Brief of May 9, 2007 defective;
- 3) have the appellants submit a substitute Appeal Brief in compliance with the new rules set forth in 37 CFR 41.37(c);

- 4) vacate the Examiner's Answer mailed January 29, 2007, and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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